



ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

Courteous Vigilance

DOUGLAS A. DUCEY
Governor

FRANK L. MILSTEAD
Director

August 24, 2018

Sent via USPS certified mail

CT Corporation System
Registered Agent for FN America, Inc.
4701 Cox Road, Suite 285
Glen Allen, VA 23060

FN America, Inc.
7918 Jones Branch Dr., Suite 400
McLean, VA 22102

FN America Law Enforcement Sales
P.O. Box 9424
McLean, VA 22102

Re: Dispute regarding reliability and performance of FNS Pistols – Notice and Demand to Preserve Evidence

Dear Sir or Ma'am:

The Arizona Department of Public Safety (“AZDPS”) has identified what appears to be a defect in the FNS pistol series. This letter constitutes the Arizona Department of Public Safety’s (“AZDPS”) demand to you to immediately identify, preserve, and not alter or destroy all documents, tangible things, information, data, (collectively “Documents”), and electronically stored information (“ESI”) in your possession or control from December 2014 to present, including Documents that may be created subsequent to the date of this letter, that is relevant or potentially relevant to the design, performance, reliability and proper functioning of the FNS pistols, specifically the FNS-9 Longslide, FNS-9, FNS-9 Compact, FNS-40 Longslide, FNS-40, and FNS-40 Compact.

Please retain and do not destroy, alter or delete any relevant or potentially relevant ESI or paper in any form, including but not limited to: paper documents, email, Microsoft Office documents, instant messages, printouts, correspondence, charts, maps, diagrams, technical specifications, materials, messages, calendars, presentations, meeting notes, other notes, status reports, voicemail messages, texts, and any other electronic or hard copy data that is relevant or potentially relevant to the matters raised in this letter. Examples of types of ESI and paper that must be preserved and the potential locations of such data is outlined in Exhibit 1 attached to this letter.

This demand encompasses all potentially relevant ESI and paper maintained at any and all FN America, Inc. and FN Herstal offices (collectively, "FN locations"), as well as all ESI and paper maintained in the homes, shared drives, computers, websites, PDAs, and any other location of your current and former agents, employees, representatives, contractors, and family members. FN America must notify any current or former agent, representative, contractor, attorney, family member, employee, or custodian in possession of potentially relevant information to preserve such information to the full extent of FN America and FN Herstal's obligations to do so, and must take reasonable steps to secure their compliance.

FN America, and all others referenced in this demand, must preserve, retain, and not destroy, alter, remove or delete any evidence, documents, tangible and intangible items, or data related in any way or potentially relevant to: (1) AZDPS, including its purchase and use of FN pistols; (2) sales to or communications directly with AZDPS or through ProForce Law Enforcement; (3) any of the events, facts, claims, allegations, and matters at issue regarding the design, performance and reliability of the FNS series; (3) FN America's claims or defenses; and (4) the claims and defenses of AZDPS or any other party, including ProForce Law Enforcement. This request includes, without limitation, all Documents related to the research and development, design, testing, performance, and reliability of the FNS pistols, and any ESI, data, information, documents, communications or evidence of the same for the time period of December 2014 to present. This demand applies to ESI and paper that have already been deleted, altered or destroyed, and which exist now or may be created hereafter.

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonable accessible to your client, but also in areas that your client may deem "not reasonably accessible." You are obligated to preserve potentially relevant evidence from both of these sources, even if you do not anticipate producing such ESI. You are obligated to preserve potentially relevant evidence that is either in hard copy form or electronic form, and you must preserve all potentially relevant ESI regardless of whether hard copies of this information also exist.

You are also requested to immediately initiate a litigation hold for potentially relevant evidence, including the specific material outlined in this letter, and any other potentially relevant electronically stored information, documents, and other tangible things, and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further requested to immediately identify and suspend features in its operations, including its information systems and devices that, in routine operation, operate to cause the loss of the specific material outlined in this letter, and any other electronically stored information, documents, evidence, and tangible things that are relevant or potentially relevant to the matters raised in this letter.

Should your failure to preserve potentially relevant evidence result in the corruption, destruction, alteration, loss, or delay in the production of evidence to which AZDPS is entitled, such failure would constitute spoliation of evidence and AZDPS will not hesitate to seek appropriate sanctions. Please confirm by no later than September 7, 2018 that you have taken the steps necessary to preserve the evidence outlined in this letter, as well as all other potentially relevant evidence to this matter.

Notice and Demand to Preserve Evidence

Page 3

If you have any questions regarding the above, or if you need clarification regarding what is being requested by AZDPS by way of this letter, please contact me. We look forward to working with you.

Sincerely,

A handwritten signature in blue ink that reads "Lisa S. Wahlin".

Lisa S. Wahlin
General Counsel

Enclosure

EXHIBIT 1

Types and locations of ESI and other materials that must be preserved

ESI and materials that must be preserved include, but are not limited to emails, electronic documents including metadata, paper documents, correspondence, voicemails, texts, instant messages, social media posts, website posts, video, calendar entries, personnel records, materials related to research, planning, design, and testing of products, and other any other related information.

With respect to electronic information, such locations may include, but are not limited to:

- Network servers (including email, web, and other servers)
- Desktop, laptop, tablets, and smartphones
- Portable electronic storage devices or media (including, but not limited to CDs, DVDs, diskettes, thumb drives, external hard drives, etc.)
- Remote computers with network connections
- Cloud and application internet service providers (such as Salesforce.com, Box.com, etc.)
- Phone systems and phone and internet service providers
- Backup storage media (magnetic tapes, USB sticks, etc.)
- Network devices (such as attached hard drives)
- Security systems
- Vehicle computer devices
- Biometric devices
- Printers and copiers
- Fax machines
- Other handheld devices
- Other lawsuits (where responsive ESI and/or paper may be located)
- Archived and legacy data
- Offsite electronic data storage such as cloud providers (including but not limited to Dropbox.com, Box.com, iCloud, Google Drive, and Microsoft OneDrive)
- Outside consultants or contractors
- Outside service providers

With respect to electronic information not under your control:

- Home computers or other personal electronic devices, including smartphones and tablets
- Personal portable electronic storage devices or media (including, but not limited to CDs, DVDs, diskettes, thumb drives, and external hard drives)
- Personal “Cloud” storage services (including, but not limited to Dropbox, iCloud, Google Drive and Microsoft OneDrive)

With respect to paper documents, such locations may include, but are not limited to:

- Official files
- Informal or working files that may be maintained by individual employees
- Files maintained in home offices or by third-party contractors under your custody, control or contract
- Files stored with off-site providers of storage services (e.g. Bekins, Iron Mountain, etc.)
- Archived files